

REMARKS

Applicants respectfully request entry of the amendment and reconsideration of the claims. Claim 3 has been amended to incorporate therein the subject matter of former claims 7 and 17-21. Claims 12-14 have been amended for clarity. Claims 4-7 and 17-21 have been cancelled without prejudice or disclaimer. Applicants reserve the right to pursue the cancelled subject matter in one or more continuation and/or divisional applications. After entry of the amendment, claims 3, 8-14, 16, and 22-24 will be pending.

Allowable Subject Matter

At pages 14-15 of the Office Action, a claim is proposed which is acknowledged by the Examiner as being allowable over the art of record. Applicants respectfully submit claim 3 as amended is in line with the claim proposed by the Examiner and places the application in condition for allowance.

Claim objections

Claims 3-6, 8-14, and 16-24 were objected to as containing an informality. Claim 3 as amended no longer recites the expression "the hydrophobic tail defining a backbone of 5 to 7 atoms" objected to by the Examiner. The objection is therefore moot.

Claim 4 was objected to based on the use of parenthetical phrases to define variables in the chemical structures set forth in the claim. Claim 4 has been cancelled without prejudice or disclaimer. The objection is therefore moot.

Rejections under 35 USC § 102

Claims 3-14, 16, 23 and 24 were rejected under 35 U.S.C. § 102(a) as being allegedly anticipated by:

- "Theratechnologies completes patient enrolment for its clinical study on chronic obstructive pulmonary disease as part of its Phase II program on ThGRF", online

April 23, 2003; and

- “Theratechnologies: patient enrolment completed in hip fracture Phase II clinical study for ThGRF”, online July 9, 2003.

Claims 3-14 and 16 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by:

- “Theratechnologies and Sakai Chemical sign landmark licensing agreement to develop and market ThGRF peptide in Japan”, online February 5, 2002;
- “Theratechnologies announces positive results of an efficacy and safety Phase II clinical trial of ThGRF in sleep maintenance insomnia”, online May 29, 2002; and
- “Theratechnologies clinically demonstrates improvement in immune function among elderly with ThGRF peptide”, online June 6, 2002.

Without acquiescing to these rejections and solely for the purpose of advancing prosecution, claim 3 has been amended to incorporate the subject matter of claims 7 and 17-21 and is consistent with the allowable claim proposed by the Examiner at page 14 of the Office Action. The Office Action at page 15 acknowledges that claim 3 as amended is not anticipated by any of the cited publications:

“The press releases cited in the anticipation rejections above to do not teach the administration of ThGRF to patients suffering from severe wasting and having the diagnostic criteria listed in parts (a)-(d) of the proposed claim.”

Claims 8-14, 16, and 22-24 depend directly or indirectly from claim 3 and are therefore not anticipated by the cited publications for the same reasons.

In view of the foregoing, Applicants submit the cited publications do not disclose all the elements of the claims as amended. Withdrawal of the rejections under § 102 is respectfully requested.

Claim rejections - 35 USC § 103

Claims 3-6, 8-14 and 16-24 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Schwartz et al. (US 6,423,693; hereinafter “Schwartz”) in view of Gravel et al. (US 6,458,764; hereinafter “Gravel”).

Without acquiescing to the rejection and solely for the purpose of advancing prosecution, claim 3 has been amended to incorporate the subject matter of claim 7 (which was not subject to the rejection) and is consistent with the allowable claim proposed by the Examiner at page 14 of the Office Action. The Examiner acknowledges at page 15 of the Office Action that claim 3 as amended is non-obvious over the cited combination of references in view of the showing of unexpected results presented in the response filed May 4, 2010.

Claims 8-14, 16, and 22-24 depend directly or indirectly from claim 3 and are therefore non-obvious over the cited combination of references for the same reasons.

In view of the foregoing, withdrawal of the rejection is respectfully requested.

Double Patenting

Claims 3-6, 8-14, and 16-24 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over;

- Claims 20-34 and 89-104 of co-pending application No. 11/877,395; or
- Claims 1-88 of copending Application No. 12/239,697; or
- Claims 1-88 of copending Application No. 12/239,708; or
- Claims 1-88 of copending Application No. 12/239,712

in further view of Schwartz et al. (US 6,423,693).

Applicants respectfully traverse this rejection. Claim 3 has been amended to incorporate the subject matter of claim 7, which was not rejected on the grounds of nonstatutory obviousness-type double patenting in view of the claims of copending Applications Nos. 11/877,395, 12/239,697, 12/239,708 or 12/239,712. Furthermore and as noted above, claim 3 as amended is consistent with the claim proposed by the Examiner, and considered to constitute allowable subject matter. Reconsideration and withdrawal of the rejection is thus respectfully requested.

Conclusion

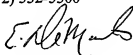
In view of the above amendments and remarks, Applicants submit the application is condition for allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: _____

October 8, 2010



Eric E. DeMaster
Reg. No. 55,107
EED:jrm

23552

PATENT TRADEMARK OFFICE